

JOSEPH P. RUSSONIELLO (CSBN 44332)  
 United States Attorney  
 JOANN M. SWANSON (CSBN 88143)  
 Chief, Civil Division  
 MICHAEL T. PYLE (CSBN 172954 )  
 Assistant United States Attorney

U.S. Attorney's Office/Civil Division  
 450 Golden Gate Avenue, 9<sup>th</sup> Floor  
 San Francisco, California 94102-3495  
 Telephone: (415) 436-7322  
 Facsimile: (415) 436-6748  
 E-mail: michael.t.pyle@usdoj.gov

Attorneys for Federal Defendants

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

SIERRA CLUB,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
 AGRICULTURE ET AL.,

Defendants.

No. 08-4248 SC

**STIPULATION AND [PROPOSED]  
 ORDER TO VACATE CASE  
 MANAGEMENT CONFERENCE AND  
 ENTER ORDER ESTABLISHING  
 SCHEDULE FOR RESOLUTION OF  
 CASE**

IT IS HEREBY STIPULATED by and between the undersigned, subject to the approval of the Court, that the Case Management Conference currently scheduled for July 10, 2009 at 10:00 a.m. should be vacated and the Court should instead enter an order with a schedule agreed upon by the parties. This stipulation was agreed to by all of the parties (including the Intervening Defendants -- Brazos Electric Power Cooperative, Inc. and East Kentucky Power Cooperative, Inc.) for the following reasons. As explained in the Joint Subsequent Case Management Conference Statement filed on July 1, 2009, Defendants and the Intervening Defendants have each spent hundreds of hours reviewing the records at issue in this FOIA case. The records are in excess of 45,000 pages of records. The process is time consuming because many of the records at issue involve various submissions from the Intervening Defendants that potentially implicate

FOIA Exemption 4 (which concerns trade secret and confidential or proprietary business information). For its part, the Sierra Club has begun to receive boxes of documents and will be spending significant amounts of time to review those records and the records that will be produced in the future. The parties have agreed on a schedule for this litigation and agree, subject, of course, to the Court's approval, that it would be more cost effective and efficient to vacate the CMC and instead enter an order setting forth a schedule for the remainder of the litigation. The Plaintiff and Intervening Defendants (whose counsel would have to travel from Washington, D.C, Texas and Kentucky) would like to avoid the expense of attending a Case Management Conference and understand that the Court states on the Court's website that it does not permit telephonic appearances. The parties represent that they have been working diligently on this case and will continue to do so. They submit that this request is consistent with the proposition that "[t]he FOIA is intended to work without court intervention." *Landmark Legal Found v. EPA*, 272 F.Supp.2d 70, 85 (D.D.C. 2003). As indicated by the parties' proposed schedule, the parties may ask the Court to rule on certain documents by means of motions for summary judgment so some intervention by the Court may ultimately be necessary. The parties believe, however, that their work to date and the work they will be undertaking in the coming months will greatly reduce the number of potential disputes for the Court to resolve and there is at least a chance that the parties will be able to resolve all of their disputes without any Court intervention.

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Respectfully Submitted,

July 2, 2009

/s/ William S. Eubanks II

William S. Eubanks II  
Howard M. Crystal  
*Pro hac vice*  
Meyer Glitzenstein & Crystal  
*Attorneys for Plaintiff Sierra Club*

JOSEPH P. RUSSONIELLO  
United States Attorney

/s/ Michael T. Pyle  
Michael T. Pyle  
Assistant U.S. Attorney

*Attorney for Federal Defendants*

/s/ James Goldberg  
James Goldberg  
Deborah A. Goldfarb  
Bryan Cave LLP

*Attorneys for Intervening Defendants Brazos Electric  
Power Cooperative, Inc. and East Kentucky Power  
Cooperative, Inc.*

**PURSUANT TO STIPULATION, IT IS SO ORDERED:**

The Case Management Conference scheduled for July 10, 2009 at 10:00 a.m. is vacated. The parties shall comply with the following schedule for the resolution of the case:

- |                        |   |
|------------------------|---|
| (a) September 25, 2009 | RUS shall use its best efforts to produce all records responsive to the October 26, 2007 FOIA request and the November 20, 2007 FOIA request, along with its <u>Vaughn</u> Index for all withholdings and redactions for the October 26, 2007 and November 20, 2007 FOIA requests, along with a letter that identifies which records produced are responsive to which categories of Plaintiff's October 26, 2007 and November 20, 2007 FOIA requests. |
| (b) November 13, 2009  | Last day for Defendant and/or Intervenor(s) to file a motion for summary judgment.  |
| (c) December 4, 2009   | Last day for Plaintiff to file opposition to any motion for summary judgment filed by Defendant and/or Intervenor(s) and last day for Plaintiff to file any cross-motion for summary judgment.  |
| (d) December 22, 2009  | Last day for Defendant and/or Intervenor(s) to file reply in support of any motion for summary judgment and last day for Defendant and/or Intervenor(s) to file opposition to any motion for summary judgment filed by Plaintiff.   |

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(e) January 8, 2010 Last day for Plaintiff to file reply in support of its cross-motion for summary judgment.

(f) ~~January 29~~, 2010 at 10 a.m. Hearing on summary judgment motions.  
February 5, 2010

DATED: July 2, 2009

